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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/167,090 10/05/98 OBLACK

M OBLM-101

EXAMINER

QM12/0916

CRAINE ASSOCIATES INC
400 112TH AVENUE NE
SUITE 140
BELLEVUE WA 98004

ARYANPOUR, M

ART UNIT

PAPER NUMBER

3711

DATE MAILED:

09/16/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/167,090

Applicant(s)

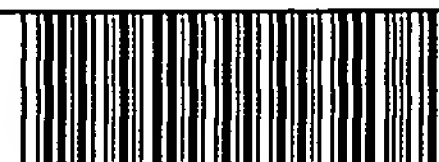
Mary Oblack

Examiner

Mitra Aryanpour

Group Art Unit

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☒ Responsive to communication(s) filed on Oct 5, 1998

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-5 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-5 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☒ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 6

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

Sebastiano Passaniti
Primary Examiner

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: Page 3, line 24 "equally" should be -- equal --.
2. Claim 4 is objected to because of the following informalities: Amended page 2, line 1, regarding the phrase "opening said half ..." there should be an -- of -- before said half.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim(s) 1, 2 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by **Cutlip (4,974,574)**.

Cutlip discloses a ball throwing apparatus (1) comprising an elongated shaft (2) Fig. 1, having a longitudinal axis and opposite distal and proximal ends (Fig. 5), a ball engaging means (4) Fig. 1 integrally formed on the distal end of shaft with means for releasing the ball when

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swung in a circular path. The ball engaging means is a half-spherical structure (4) with an opening capable of snap fitting around a ball (Fig 1).

Cutlip further discloses a method of playing the game of fetch which includes the following steps: selecting an elongated shaft (13) with opposite distal end proximal ends (Fig. 5) and having a ball engaging means (4) disposed at the distal end, where the ball engaging means is capable of engaging a ball without the aid of one's hands or fingers and capable of releasing a ball when the shaft is swung (Fig. 1), holding the proximal end of shaft, attaching a ball to the ball engaging means while holding the proximal end of shaft, sufficiently swinging shaft while holding the proximal end thereby causing the ball to be released from the ball engaging means.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim(s) 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Cutlip (4,974,574)**.

Cutlip teaches all the elements of the art as mentioned above, but Cutlip does not clearly state that the ball throwing apparatus (1) has an elongated shaft (13) ^{which} ~~which~~ is rearwardly curved,
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and wherein the opening of the half spherical structure is aligned approximately 5 degrees forward and approximately 33 degrees behind the longitudinal axis of shaft.

However when referring to Fig. 3, shaft 13, and Fig 5, ball throwing apparatus (1), both figures clearly show an arcuate shaft (13) which is ~~a~~ rearwardly curved, and as a result of the arcuate semi-rigid shaft (13) the half-spherical structure (17) is aligned at an angle with the longitudinal axis of the shaft.

It would have been obvious to one of ordinary skill in the art to utilize the slight bending of the shaft and the angled relationship of the half-spherical structure with the shaft to allow the ball to be picked more readily.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. **Tarrant (5,423,543)** shows a ball lift attached to a handgrip; **Hayman (5,129,650)** shows a flexible throwing rod with a ball releasably attached to its distal end; **Hoffman (3,841,292)** shows a hand operated catapult; **Evans (3,206,202)** shows a half-spherical structure capable of snap fitting around a ball; **Minneman (5,390,652)** shows dual thrower with a arcuate shaft.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mitra Aryanpour whose telephone number is (703) 308-3550. The examiner can normally be reached on Monday through Friday from 8:00 am to 4:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeanette Chapman, can be reached on (703) 308-1310. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-7768.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

MA

September 9, 1999


Sebastiano Passaniti
Primary Examiner